

UNITED STATES OF AMERICA

JAMES T. WIGNALL,

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

OPINION AND ORDER

By: James P. Jones
Chief United States District Judge

The defendant has filed a “Motion for Reduction in Sentence Pursuant to Title 18 U.S.C. § 3582(c)(2),” in which he seeks to reduce his sentence because of a later amendment to the U.S. Sentencing Guidelines. The motion will be denied.

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The defendant concedes that Amendment 709 is not listed in the applicable Sentencing Commission policy statement, USSG § 1B1.10 (2008), but argues that the amendment is only “clarifying” and thus may be applied retroactively.

Unfortunately for the defendant, the law of this circuit is that only amendments listed in USSG § 1B1.10(c) may be the subject of a motion under 18 U.S.C.A. § 3582(c)(2). *United States v. McHan*, 386 F.3d 620, 622 (4th Cir. 2004). Where a case is on direct appeal and a clarifying amendment is effective after sentencing, the amendment may be applied retroactively, *see United States v. Capers*, 61 F.3d 1100, 1109 (4th Cir. 1995), but that rule does not apply to a later collateral motion under § 3582(c)(2).

For the foregoing reasons, it is **ORDERED** that the defendant’s motion (219) is DENIED.

ENTER: December 22, 2008

/s/ JAMES P. JONES
Chief United States District Judge